FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPLICATION NO. 731 OF 2005 WITH
CRIMINAL APPLICATION NOS. 732 OF 2005 & 771/2005

Office notes, office Memoranda of Coram, appearance, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr.J.P. Kharge for the Applicants.

Mr. U.P. Warunjikar for the Respondent No.2.

Mr.Srringarpure, APP. for the State.

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CORAM: V.M. KANADE, J.
DATED: 4/5/2005.

PC:

1. Heard learned counsel for the applicants and the respondents.

2. The applicants are challenging the order of issuance of process by the Trial Court in a complaint under Section 138 of the Negotiable Instruments Act. It is submitted by the learned counsel for the applicants that the complaint filed by the respondent No.2 is not

maintainable as the appropriate firm is not a party in a complaint and the complaint has been filed only against the Proprietor. He invited my attention under Section 141 of the Negotiable Instruments Act and the explanation of sub section 2 and submitted that the word firm which is found in the explanation to Section 141 includes Proprietary firm and therefore, a Proprietary firm ought to have been made a party in the complaint which was filed by respondent No.2. I am unable to accept this submission made on behalf of the applicants. From the perusal of the complaint, it is seen that the complaint is filed against the applicants for dues towards goods which were sold and delivered and therefore towards an existing liability. Cheques were issued by the applicants, which were dishonoured although it were deposited in the bank. In my view the provisions of Section 141 are not

attracted in the present case. The learned Magistrate has also issued process only under Section 138 of the Negotiable Instruments Act. In my view, there is no merit in the contention of the learned counsel for the applicants. Therefore, the above applications are rejected.

(V.M. KANADE, J.)